

SENATE BILL No. 175

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5.

Synopsis: Credit score disclosures and credit inquiries. Provides that upon receiving a consumer's request for a credit score, a consumer reporting agency shall provide the consumer a notice that includes certain specified information, including not more than four key factors that adversely affected the consumer's credit score, listed in order of their importance in affecting the consumer's credit score. Provides that a consumer reporting agency may not develop or distribute a credit score for a consumer if the credit score is based on a methodology in which the credit score is adversely affected by certain designated credit inquiries made with respect to the consumer. Provides that a creditor may not use as a negative factor in: (1) evaluating a consumer's creditworthiness, credit standing, or credit capacity; or (2) determining: (A) a consumer's eligibility for credit; or (B) the terms or costs of any credit extended to a consumer; any designated credit inquiries made to a consumer reporting agency with respect to the consumer. Provides that a creditor may not use as a factor in: (1) evaluating a consumer's creditworthiness, credit standing, or credit capacity; or (2) determining: (A) a consumer's eligibility for credit; or (B) the terms or costs of any credit extended to a consumer; any credit score generated for the consumer if the credit score is based on a methodology in which the credit score is adversely affected by any designated credit inquiries made with respect to the consumer. Provides that a person that violates these provisions commits a deceptive act that is subject to the penalties set forth in the statute concerning deceptive consumer sales.

Effective: July 1, 2014.

Miller Patricia

January 8, 2014, read first time and referred to Committee on Commerce, Economic Development & Technology.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 175

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.273-2013,
2 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 3. (a) The following acts, and the following
4 representations as to the subject matter of a consumer transaction,
5 made orally, in writing, or by electronic communication, by a supplier,
6 are deceptive acts:
7 (1) That such subject of a consumer transaction has sponsorship,
8 approval, performance, characteristics, accessories, uses, or
9 benefits it does not have which the supplier knows or should
10 reasonably know it does not have.
11 (2) That such subject of a consumer transaction is of a particular
12 standard, quality, grade, style, or model, if it is not and if the
13 supplier knows or should reasonably know that it is not.
14 (3) That such subject of a consumer transaction is new or unused,
15 if it is not and if the supplier knows or should reasonably know
16 that it is not.



1 (4) That such subject of a consumer transaction will be supplied
2 to the public in greater quantity than the supplier intends or
3 reasonably expects.

4 (5) That replacement or repair constituting the subject of a
5 consumer transaction is needed, if it is not and if the supplier
6 knows or should reasonably know that it is not.

7 (6) That a specific price advantage exists as to such subject of a
8 consumer transaction, if it does not and if the supplier knows or
9 should reasonably know that it does not.

10 (7) That the supplier has a sponsorship, approval, or affiliation in
11 such consumer transaction the supplier does not have, and which
12 the supplier knows or should reasonably know that the supplier
13 does not have.

14 (8) That such consumer transaction involves or does not involve
15 a warranty, a disclaimer of warranties, or other rights, remedies,
16 or obligations, if the representation is false and if the supplier
17 knows or should reasonably know that the representation is false.

18 (9) That the consumer will receive a rebate, discount, or other
19 benefit as an inducement for entering into a sale or lease in return
20 for giving the supplier the names of prospective consumers or
21 otherwise helping the supplier to enter into other consumer
22 transactions, if earning the benefit, rebate, or discount is
23 contingent upon the occurrence of an event subsequent to the time
24 the consumer agrees to the purchase or lease.

25 (10) That the supplier is able to deliver or complete the subject of
26 the consumer transaction within a stated period of time, when the
27 supplier knows or should reasonably know the supplier could not.
28 If no time period has been stated by the supplier, there is a
29 presumption that the supplier has represented that the supplier
30 will deliver or complete the subject of the consumer transaction
31 within a reasonable time, according to the course of dealing or the
32 usage of the trade.

33 (11) That the consumer will be able to purchase the subject of the
34 consumer transaction as advertised by the supplier, if the supplier
35 does not intend to sell it.

36 (12) That the replacement or repair constituting the subject of a
37 consumer transaction can be made by the supplier for the estimate
38 the supplier gives a customer for the replacement or repair, if the
39 specified work is completed and:

40 (A) the cost exceeds the estimate by an amount equal to or
41 greater than ten percent (10%) of the estimate;

42 (B) the supplier did not obtain written permission from the



customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A); (C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and (D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.



- 1 (17) The violation by a supplier of IC 24-3-4 concerning
2 cigarettes for import or export.
- 3 (18) The act of a supplier in knowingly selling or reselling a
4 product to a consumer if the product has been recalled, whether
5 by the order of a court or a regulatory body, or voluntarily by the
6 manufacturer, distributor, or retailer, unless the product has been
7 repaired or modified to correct the defect that was the subject of
8 the recall.
- 9 (19) The violation by a supplier of 47 U.S.C. 227, including any
10 rules or regulations issued under 47 U.S.C. 227.
- 11 (20) The violation by a supplier of the federal Fair Debt
12 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
13 rules or regulations issued under the federal Fair Debt Collection
14 Practices Act (15 U.S.C. 1692 et seq.).
- 15 (21) A violation of IC 24-5-7 (concerning health spa services), as
16 set forth in IC 24-5-7-17.
- 17 (22) A violation of IC 24-5-8 (concerning business opportunity
18 transactions), as set forth in IC 24-5-8-20.
- 19 (23) A violation of IC 24-5-10 (concerning home consumer
20 transactions), as set forth in IC 24-5-10-18.
- 21 (24) A violation of IC 24-5-11 (concerning home improvement
22 contracts), as set forth in IC 24-5-11-14.
- 23 (25) A violation of IC 24-5-12 (concerning telephone
24 solicitations), as set forth in IC 24-5-12-23.
- 25 (26) A violation of IC 24-5-13.5 (concerning buyback motor
26 vehicles), as set forth in IC 24-5-13.5-14.
- 27 (27) A violation of IC 24-5-14 (concerning automatic
28 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 29 (28) A violation of IC 24-5-15 (concerning credit services
30 organizations), as set forth in IC 24-5-15-11.
- 31 (29) A violation of IC 24-5-16 (concerning unlawful motor
32 vehicle subleasing), as set forth in IC 24-5-16-18.
- 33 (30) A violation of IC 24-5-17 (concerning environmental
34 marketing claims), as set forth in IC 24-5-17-14.
- 35 (31) A violation of IC 24-5-19 (concerning deceptive commercial
36 solicitation), as set forth in IC 24-5-19-11.
- 37 (32) A violation of IC 24-5-21 (concerning prescription drug
38 discount cards), as set forth in IC 24-5-21-7.
- 39 (33) A violation of IC 24-5-23.5-7 (concerning real estate
40 appraisals), as set forth in IC 24-5-23.5-9.
- 41 (34) A violation of IC 24-5-26 (concerning identity theft), as set
42 forth in IC 24-5-26-3.



(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

(38) A violation of IC 24-5-24.1 (concerning credit score disclosures and credit inquiries, as set forth in IC 24-5-24.1-12.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15) and (a)(16), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense



1 to any action brought under this chapter that the product has been
 2 altered by a person other than the defendant to render the product
 3 completely incapable of serving its original purpose.

4 SECTION 2. IC 24-5-24.1 IS ADDED TO THE INDIANA CODE
 5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2014]:

7 **Chapter 24.1. Credit Score Disclosures and Credit Inquiries**

8 **Sec. 1. This chapter does not apply to the use of credit**
 9 **information or an insurance score by an insurer under IC 27-2-21.**

10 **Sec. 2. As used in this chapter, "consumer" means an**
 11 **individual:**

12 (1) whose principal residence is in Indiana; and

13 (2) whose credit information and history are recorded in a
 14 consumer report.

15 **Sec. 3. (a) As used in this chapter, "consumer report" means**
 16 **any written, oral, or other communication of any information that:**

17 (1) is made by a consumer reporting agency;

18 (2) bears on a consumer's creditworthiness, credit standing,
 19 credit capacity, character, general reputation, personal
 20 characteristics, or mode of living; and

21 (3) is used or expected to be used or collected in whole or in
 22 part for the purpose of serving as a factor in establishing a
 23 consumer's eligibility for:

24 (A) credit or insurance to be used primarily for personal,
 25 family, or household purposes;

26 (B) employment purposes; or

27 (C) any other purpose authorized under Section 604 of the
 28 federal Fair Credit Reporting Act (15 U.S.C. 1681b).

29 **Sec. 4. (a) As used in this chapter, "consumer reporting agency"**
 30 **means any person that, for monetary fees or dues, or on a**
 31 **cooperative nonprofit basis, regularly engages in whole or in part**
 32 **in the practice of assembling or evaluating consumer credit**
 33 **information or other information on consumers for the purpose of**
 34 **furnishing consumer reports to third parties.**

35 (b) The term does not include a person listed in IC 24-5-24-11.

36 **Sec. 5. As used in this chapter, "credit file", with respect to a**
 37 **consumer, means all the information that:**

38 (1) pertains to the consumer; and

39 (2) is recorded and retained by a consumer reporting agency;
 40 regardless of how the information is stored.

41 **Sec. 6. (a) As used in this chapter, "creditor" means:**

42 (1) a lender of money; or



(2) a vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction.

(b) The term includes any:

- (1) successor in interest to;
- (2) affiliate, associate, or subsidiary of; or
- (3) director, officer, or employee of;

a lender, vendor, or lessor described in subsection (a).

Sec. 7. (a) As used in this chapter, "credit score" means a numerical value or a categorization that:

- (1) is derived from a statistical tool or modeling system; and
- (2) is used by a creditor to predict the likelihood of certain credit behaviors, including default;

regardless of whether the numerical value or categorization is referred to as a "credit score", "risk predictor", "risk score", or some other term, or by a proprietary name.

(b) The term does not include any mortgage score or rating of an automated underwriting system that considers one (1) or more factors in addition to credit information, such as loan to value ratio, the amount of down payment, or a consumer's financial assets.

(c) The term does not include other elements of an underwriting process or underwriting decision that are not described in subsection (a).

Sec. 8. As used in this chapter, "designated credit inquiry" refers to any of the following credit inquiries made to a consumer reporting agency about a consumer:

(1) A credit inquiry:

- (A) not initiated by the consumer; or
- (B) requested by the consumer for the consumer's own credit information.

(2) A credit inquiry relating to insurance coverage.

(3) Multiple creditor inquiries:

- (A) coded by the consumer reporting agency on the consumer's consumer report as being from creditors engaged in the same industry; and
- (B) made within thirty (30) days of one another.

Sec. 9. (a) Upon receiving a consumer's request for a credit score, a consumer reporting agency shall provide the consumer a notice that includes the following information:

- (1) The consumer's current credit score or the most recent credit score developed or obtained by the consumer reporting



agency for a purpose related to the extension of credit.

(2) The date the credit score was calculated.

(3) The range of possible credit scores under the methodology used to develop the consumer's credit score.

(4) Not more than four (4) key factors that adversely affected the consumer's credit score. The consumer reporting agency shall list and denote the key factors described in this subdivision in the order of their importance based on their effect on the consumer's credit score.

(5) If not identified as a key factor under subdivision (4), the effect of credit inquiries, other than designated credit inquiries, on the consumer's credit score. A consumer reporting agency complies with this subdivision if the consumer reporting agency states the weight given, expressed as a percentage of the total credit score or as otherwise appropriate, to credit inquiries (other than designated credit inquiries) in calculating credit scores under the statistical tool or modeling system used to determine the consumer's credit score.

(6) The name of, and contact information for, the person or entity responsible for the following:

(A) Developing the consumer's credit score, or developing the methodology used to calculate the consumer's credit score, if the consumer reporting agency distributes credit scores that are:

(i) developed by another person or entity; or

(ii) calculated using a methodology developed by another person or entity.

This clause does not apply to a consumer reporting agency that develops or modifies credit scores that are developed by another person or entity.

(B) Providing the credit file on which the consumer's credit score is based, if the consumer's credit score is based on a credit file other than the credit file maintained for the consumer by the consumer reporting agency.

(7) A statement that the credit score set forth in the notice, or the methodology used to calculate the credit score set forth in the notice, may be different from the credit score or credit scoring methodology used by a creditor in:

(A) evaluating the consumer's creditworthiness, credit standing, or credit capacity; or

(B) determining:



- (i) the consumer's eligibility for credit; or
- (ii) the terms or costs of any credit extended to the consumer.

(b) The notice required by this section must be provided to the consumer:

- (1) not later than ten (10) business days after the date of the consumer's request for a credit score; and
- (2) in writing or by the same medium used by the consumer to request the consumer's credit score.

In the case of a notice provided in writing, a consumer reporting agency complies with subdivision (1) if the consumer reporting agency deposits the notice in the United States mail with postage prepaid and the notice is postmarked not later than ten (10) business days after the date of the consumer's request for a credit score.

(c) This section does not require a consumer reporting agency to do any of the following:

- (1) Develop a credit score if the consumer reporting agency does not otherwise develop credit scores that assist creditors in:

- (A) understanding the general credit behavior of consumers; or

- (B) predicting future credit behavior.

- (2) Subject to subsection (a)(6), in the case of a consumer reporting agency that distributes credit scores that are developed by another person or entity, or that are calculated using a methodology developed by another person or entity:

- (A) provide further explanation about those credit scores or the methodology used to calculate them; or

- (B) process a dispute that may arise in connection with those credit scores.

- (3) Maintain credit scores in the consumer reporting agency's files.

(d) A consumer reporting agency may not impose a charge or fee on a consumer, other than any charge or fee that the consumer reporting agency normally charges for providing a credit score to a consumer, for providing the notice required under this section.

Sec. 10. Subject to, and except as prohibited by:

- (1) the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and any regulations adopted under that act; and
- (2) any other applicable federal laws, regulations, orders, or guidance;



1 a consumer reporting agency may not develop or distribute a
 2 credit score for a consumer if the credit score is based on a
 3 methodology in which the credit score is adversely affected by any
 4 designated credit inquiries made with respect to the consumer.

5 Sec. 11. (a) Subject to, and except as prohibited by federal law,
 6 a creditor may not use as a negative factor in:

7 (1) evaluating a consumer's creditworthiness, credit standing,
 8 or credit capacity; or

9 (2) determining:

10 (A) a consumer's eligibility for credit; or

11 (B) the terms or costs of any credit extended to a
 12 consumer;

13 any designated credit inquiries made to a consumer reporting
 14 agency with respect to the consumer.

15 (b) Subject to, and except as prohibited by federal law, a
 16 creditor may not use as a factor in:

17 (1) evaluating a consumer's creditworthiness, credit standing,
 18 or credit capacity; or

19 (2) determining:

20 (A) a consumer's eligibility for credit; or

21 (B) the terms or costs of any credit extended to a
 22 consumer;

23 any credit score generated for the consumer if the credit score is
 24 based on a methodology in which the credit score is adversely
 25 affected by any designated credit inquiries made with respect to
 26 the consumer.

27 Sec. 12. A person who violates this chapter commits a deceptive
 28 act under IC 24-5-0.5 and is subject to the penalties listed in
 29 IC 24-5-0.5.

